

#### Members

Rep. Jackie Walorski, Chairperson  
Rep. Ryan Dvorak  
Sen. Luke Kenley  
Sen. John Broden  
Art Harris  
Tobias Buck  
Jeff Miller  
Mark Stuaan  
Sue Shadley  
Mayor John Zumer  
Mayor Shannon Buskirk  
Jim Flannery  
Carol McDowell  
John Land  
Gordon Durnil  
Stephen Johnson  
Tom Easterly  
Robert Carter



## ENVIRONMENTAL CRIMES TASK FORCE

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Bernadette Bartlett, Fiscal Analyst for the Task Force  
Matt Nagle, Fiscal Analyst for the Task Force

Authority: P.L. 63-2005 (SEA 195-2005)

### MEETING MINUTES<sup>1</sup>

**Meeting Date:** August 24, 2006  
**Meeting Time:** 10:00 AM  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 5

**Members Present:** Rep. Jackie Walorski, Chairperson; Rep. Ryan Dvorak; Sen. Luke Kenley; Sen. John Broden; Jeff Miller; Mark Stuaan; Sue Shadley; Mayor John Zumer; Mayor Shannon Buskirk; Jim Flannery; John Land; Gordon Durnil; Stephen Johnson; Tom Easterly; Robert Carter.

**Members Absent:** Art Harris; Tobias Buck; Carol McDowell.

#### 1. Call to Order and Administrative Matters

Rep. Walorski called the meeting to order at 10:10 AM and asked Sen. Kenley to conduct the meeting. Sen. Kenley summarized the work of the Task Force to date. He would like

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

the Task Force to approve a legislative draft to be provided to the Environmental Quality Service Council and introduced in the next session of the General Assembly.

## 2. Corporate Criminal Responsibility

Stephen Johnson distributed a summary entitled "Corporate Criminal Responsibility for Environmental Crimes" (Exhibit #1) and explained the current law that allows under certain circumstances the prosecution of: (1) corporations and other non-individuals; and (2) the officers of those entities. The members discussed the extent to which an environmental crimes statute should specify the standards for finding a business entity or an officer criminally liable.

## 3. Discussion of Legislative Draft

The members discussed the revised environmental crimes legislative draft (Exhibit #2) prepared by Andy Hedges. The following issues were discussed:

- whether criminalizing the violation of rules in the areas of underground storage tanks and solid waste incineration should be retained
- whether it is appropriate to criminalize reckless behavior (in addition to knowing or intentional behavior) and whether an element of intent could be made a part of the reckless standard
- whether with respect to solid waste and underground storage tank statutes a release of contaminants must occur before behavior is considered criminal (as is the case with air and water)
- whether levels of offense and penalty, defenses to prosecution, and standards for criminal violation should be made more consistent among all of the categories (air, water, wetlands, etc.)
- whether criminal penalties should be more consistent with those of other states
- whether both criminal and civil sanctions should apply to the same violation, and whether a significant civil penalty is tantamount to a criminal sanction
- whether it is necessary to specify crimes based on operation without a permit
- whether the penalties for certain violations should include denial of a permit for future operations
- whether it is appropriate to specify the type and magnitude of environmental harm that must occur for an act or omission to be considered criminal
- whether different levels of offense should be specified based on the magnitude of environmental harm
- whether issues concerning magnitude of the environmental crime could be addressed with sentencing guidelines
- whether unjust enrichment from environmental criminal behavior should be specifically prohibited
- whether the new provisions concerning environmental crimes should be consolidated into a single chapter
- whether in sections concerning false loan applications the phrase "in connection with an application" should instead be "in an application"
- whether a statute of limitations should be included for the new environmental crimes provisions

It was noted that: (1) IC 35-43-1-5, as added in the draft, should be harmonized with IC 35-45-3-1 concerning the poisoning of a public water supply; and (2) the definition of "person" in IC 4-6-3-3, as amended in the draft, should be consistent with the definition used for environmental crimes.

### 3. Next Meeting

Sen. Kenley indicated that further amendments will be made to the legislative draft, which will be distributed to the members and discussed at the next meeting. The next meeting was initially scheduled on October 5, but the date was changed after the meeting to October 12. The meeting will be held at 9:00 AM in Room 431 of the State House.

### 4. Adjournment

The meeting was adjourned at 11:35 AM.